

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL JERIMIAH SIMMS,

Plaintiff,
v.

CHARLES R. SCHWAB, et al.,

Defendants.

CASE NO. C19-5642 BHS

ORDER GRANTING PLAINTIFF'S
MOTION FOR VOLUNTARY
DISMISSAL AND DECLINING TO
ADOPT R&R AS MOOT

This matter comes before the Court on the Report and Recommendation (“R&R”)

of the Honorable J. Richard Creature, United States Magistrate Judge, Dkt. 10, and

Plaintiff's motion for voluntary dismissal of action, Dkt. 11.

On January 6, 2020, Judge Creatura issued the R&R recommending Plaintiff's proposed second amended complaint be dismissed without prejudice for failure to state a claim. Dkt. 10. Judge Creatura screened Plaintiff's proposed complaints *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2). *Id.* at 2.

On January 21, 2020, Plaintiff filed a motion for voluntary dismissal without prejudice. Dkt. 11. Although Plaintiff indicated that his filing is a motion on the docket, the pleading is styled as a notice of voluntary dismissal rather than a motion. *Id.*

1 Federal Rule of Civil Procedure 41(a)(1)(A)(i) allows voluntary dismissal of an
2 action by a plaintiff without a court order if the opposing party has not filed an answer or
3 a motion for summary judgment. In this case, no defendant has appeared. Thus,
4 Plaintiff's case should be dismissed without prejudice. Fed. R. Civ. P. 41(a)(1)(A)(i).

5 Because Plaintiff has voluntarily dismissed his action without prejudice, the Court
6 declines to adopt the R&R as moot. Therefore, the Court having considered the R&R,
7 Plaintiff's motion for voluntary dismissal, and the remaining record, does hereby find and
8 order as follows:

(1) The R&R is **DECLINED** as moot; and

(2) Plaintiff's case is **DISMISSED** without prejudice.

Dated this 6th day of February, 2020.


BENJAMIN H. SETTLE
United States District Judge